



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	08/17/04	Bill No:	AB 1412
Subject:	Kopp Act	Author:	Wolk
Related Bills:			

BILL SUMMARY

This bill would require a Member of the Board to disclose that they have received a contribution of \$250 or more from a committee sponsored by a party, participant, or agent who has an adjudicatory proceeding pending before the Board of Equalization, and therefore refrain from voting on, or participating in, the matter.

Summary of Amendments

The amendments would require a “sponsored committee” to disclose to the Board in writing at the time a contribution is made that they are a sponsored committee.

ANALYSIS

Current Law

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each Member who knows or has reason to know that he or she received a contribution of \$250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each Member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a Member of \$250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any Member or Board employee who knowingly or willfully violates any of those provisions is guilty of a misdemeanor. Currently, contributions by Political Action Committees (PACs) are not subject to the contribution limits and disclosure requirements in the Act.

Under Section 15626, a “party” is any person who is subject to an adjudicatory proceeding before the Board.

A “participant” is defined as any person, who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the Board and who has a financial interest in the decision. A person actively supports or opposes a particular decision if he or she lobbies in person the Members or employees of the Board, testifies in person before the Board, or otherwise acts to influence the Members of the Board.

An “agent” is any person who represents a party to or participant in an adjudicatory proceeding pending before the Board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Proposed Law

This bill would amend Government Code Section 15626 to provide that party, participant, and agent (hereafter often referred to simply as “party”) include any committee sponsored by that person for purposes of complying with the Kopp Act disclosure and disqualification provisions.

“Sponsored committee” would have the same meaning as “sponsored committee” contained in Government Code Section 82048.7 which means “a committee, other than a candidate controlled committee, which has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee.

“(b) A person sponsors a committee if any of the following apply:

“(1) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders.

“(2) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

“(3) The person alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.

“(4) The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.”

For purposes of this provision, “committee” would have the same meaning as prescribed in Government Code Section 82013 and related regulations.

This bill would also require a sponsored committee that is a party to, or a participant in, an adjudicatory proceeding pending before the Board to disclose in written form to a candidate or Member of the Board, at the time that a contribution of any amount is made to the candidate or member, that the committee is a sponsored committee and the identity of the sponsor or sponsors of the committee.

In General

Prior to all Board hearings, each party scheduled to appear before the Board is sent a letter and form requesting specific information related to the Kopp Act provisions. The Board Proceedings Division mails the letter and contribution disclosure form several weeks before the hearing date requesting very specific information. The Board Proceedings Division will continue to follow up on the disclosure forms until they have received a written response. Some responses have been known to arrive the very morning of the Board hearing, resulting in last minute decisions about whether or not to hear a case since the eligibility of a Member to participate in the case may still be in question.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author in order to require certain political action committees that are sponsored by parties who have a pending case before the Members of the Board of Equalization to be subject to the requirements of the Kopp Act. The author believes current law allows taxpayers to avoid the spirit of the Kopp Act.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

2. **August 17 amendments.** The amendments require a sponsored committee to identify itself as such in writing when it makes a contribution to a candidate or Member of the Board. **The June 28 amendments** changed the qualifying committee from a “controlled committee” to a “sponsored committee” and added a definition.
3. **The August 17 amendments are not consistent with current disclosure requirements.** Under the Kopp Act, a party, participant or agent is required to disclose on the record of the proceeding that they have made aggregate contributions of \$250 or more in the preceding 12 months. The August 17 amendment would require parties or participants to disclose whether they are a sponsored committee each time they make a contribution to a Member or candidate for the Board, but only if they have a matter pending before the Board at the time of the contribution. If the campaign contribution occurred prior to the time that an adjudicatory proceeding is pending before the Board, but still within 12 months of the adjudicatory proceeding, no disclosure would be required by this amendment. Therefore, this amendment does not solve the basic problem with this legislation: How can the Board properly identify a sponsored committee contribution without putting the Member at risk of violating the Kopp Act through the omission of disclosable contributions?

These provisions also would not require an agent who sponsors a committee to identify itself to the Board. This loophole adds an additional burden on the Board if it is required to identify which committee is a sponsored committee.

4. **The amendments still do not add any consequences for a party that fails to disclose that it is a sponsored committee.** As pointed out in the prior analysis of this bill, if a party with an issue before the Board fails to disclose a contribution to a Member, there are no consequences for that party. Conversely, Members who fail to disclose could be subject to substantial fines and possible disqualification from running for elective office.

The amendments in this version of the bill simply add a requirement for a specified party to disclose, at the time of contribution, that they are a sponsored committee. But the bill does not add any penalties or sanctions for not identifying themselves as a sponsored committee. Therefore, even with the amendments, if a party with an issue before the Board fails to disclose a contribution to a Member, there are no consequences for that party. Again, since this measure increases the number of disclosable contributions, this inequity could result in increased penalties for the Members, but not for a party who fails to provide the Members with sufficient campaign disclosure information. The responsibility to identify a sponsored committee has not been adequately shifted to the party.

The bill should be amended to make it clear that a Member may rely on contribution disclosure forms filed by a party with the Board when the party has been scheduled for a hearing, not at the time of contribution, to determine whether a sponsored committee made contributions to Board Members. The bill should also be amended to provide for sanctions for a party who fails to file contribution disclosure forms with the Board.

5. **It will be extremely difficult to identify a participant who sponsors a committee.** Under the law, a participant is any person who actively supports or opposes a particular decision in an adjudicatory proceeding before the Board and who has a *financial interest* in the Board's decision. The term "financial interest" is not specifically defined in the law. Current Fair Political Practices Commission regulations provide a complex, multi-step process to determine if a person has a financial interest in a decision. Therefore, in order to comply with this bill, not only would the Board have to go through the process of determining if a person has a financial interest in a decision, which would make them a participant, but then subsequently determine if that participant sponsors a committee. Again, without adequate disclosure requirements combined with a penalty for noncompliance, the Board cannot be expected to be able to comply with the provisions of this bill.
6. **The definition of "sponsored committee" would still create compliance problems for the Board.** Since the August 17 amendments do not require a sponsored committee to disclose upon request, or impose a penalty for noncompliance, the definition of sponsored committee in the bill still raises compliance and reporting concerns, since the statute referenced was not crafted to address the disclosure and disqualification provisions of the Kopp Act. As explained in Comment 7, unlike the normal purpose for which the definition of sponsored committee is used, the disclosure and disqualification requirements of the Kopp Act have a significant impact on Board Members in that these requirements may preclude a member from voting on an adjudicatory matter that is pending before the Board. The following sets forth potential problems for the Board with the definition in the bill:
- **The committee receives 80% or more of its contributions from the person or its members, officers, employees, or shareholders.** In order to determine if this provision is applicable, a party, participant or agent must spend time determining whether a committee -- which it may not directly control -- gets 80% of its contributions from the party, or its members, officers, employees, or shareholders. Unbeknownst to a party, the status of a committee could change from non-sponsored to sponsored based on contributions received after the last filing period. The determination of sponsorship is also complicated by the fact that contributions of less than \$100 are not separately reported. This lack of current and complete campaign contribution information could result in a Member failing to realize that a disqualifying contribution was received from a sponsored committee.
 - **The person alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.** The term "nearly all" is open to interpretation. It may be appropriate to amend the bill to provide that a person sponsors a committee if the person contributed a specific percentage, perhaps 95%, of administrative costs during the last reporting period.
 - **The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.** Based on the current definition of "sponsored committee," it appears that a party may be considered a sponsor even if the party represents just one of many votes on the board of directors of a committee. Under this definition, a

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

party may be unable to have a matter heard by the Board because the committee made contributions to Board Members that the party voted against making. It appears inappropriate that such limited involvement by a party in the setting of policy for a multi-sponsored committee should result in disqualification of Board Members.

7. **The purpose of disclosure of contribution differs dramatically between Members of the Board and legislators.** While both Members of the Board and the Legislature must disclose their campaign contributions, legislators are not disqualified from voting on issues, unless they have a personal economic interest in a specific measure. However, Members of the Board must also disqualify themselves from voting if they have received a \$250 contribution from a party, participant, or agent in an adjudicatory proceeding before the Board. Because of this fundamental difference, the expansion by this measure of the Kopp Act to include certain committee contributions imposes even greater reporting, disclosure, and vote disqualification responsibilities than those imposed on the Legislature.
8. **A sponsored committee does not necessarily contain the name of the sponsor.** Fair Political Practices Commission Regulation 18419, subdivision (b), provides that if a committee has multiple sponsors, it may be identified by the name of an industry or group rather than including the names of all sponsors in its committee name. Consequently, it is not necessarily apparent from the committee name that a particular party sponsors the committee. The bill could be amended to require a committee who makes a contribution to a Board Member or the State Controller to file a copy of its Statement of Organization (FPPC Form 410) with the Board of Equalization. This will assist the Board in determining committee sponsors. Another option would be to require disclosure and disqualification only when a disqualifying contribution is received from a committee that is sponsored by a single party, participant or agent who is therefore identified in the committee name as required by Regulation 18419.

COST ESTIMATE

The August 17 amendments would require Board Proceedings Division to maintain a database of contributions made to the Board at the time of donation, which it currently does not maintain. Current practice is to request contribution information at the time a matter has been scheduled for a Board hearing, in compliance with the current Kopp Act provisions. The workload associated with having the Legal and Board Proceedings Divisions and each Board Members' office determine whether a committee contribution is from a "sponsored committee" would impose unabsorbable costs upon the Board. These additional costs would include computer programming, legal interpretation of what constitutes compliance, revision of disclosure forms, and additional staff time to investigate committee contributions and reports. These costs are estimated to be \$581,000 in 2004/05, \$140,000 in 2005/06, and \$132,000 in 2006/07 and annually thereafter.

REVENUE ESTIMATE

This measure would not impact the state's revenues.

Analysis prepared by:	Kevin A. Beile	323-7169	08/26/04
Contact:	Margaret S. Shedd	322-2376	

1412-7kb.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.